LOS ANGELES BAR BULLETIN

In This Issue

Vol. 29 **August, 1954** **No. 11**

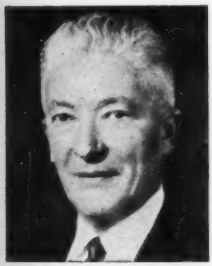
Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association, 241 East Fourth Street, Los Angeles 13, California. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.80 a Year; 15c a Copy.

VOL. 29 AUGUST, 1954 No. 11

The President's Page

By Harold A. Black



Harold A. Black

We have always accepted the thesis as fundamental to our conceptions of due process that when a defendant in a criminal case is incarcerated in jail and is without means to employ counsel, he is entitled to have the advice and guidance of an attorney before being required to answer to the charge on which he is being deprived of his liberty. Either by means of the public defender system or by volunteers appointed by the court, such a defendant is assured of legal representation.

So, also, the defendant who knows the lawyer he wishes to employ and can afford to pay him ordinarily finds no difficulty in arranging to secure the services of the attorney of his choice.

It often happens, however, that a defendant is held on some criminal complaint who is not destitute, is able and willing to pay a moderate fee, but does not know any attorney. This is the situation where the self-appointed "camp follower" or the notorious "bail bond advocate" are apt to flourish, and often tend to bring the profession into disrepute. To meet the need of providing an orderly, ethical, and dignified way of obtaining counsel for such defendants, your Association is undertaking to establish a Criminal

Defense Lawyer Reference Service. Every attorney in good standing in Los Angeles County who considers himself qualified to act in criminal cases is invited to enroll in this activity. He need not be a member of the Los Angeles Bar Association.

By communicating with the Association office, a registration form may be obtained. On this form information concerning the address, firm (if any), age, general and legal education, trial experience of the registrant is entered, the names of references are noted, and any special qualifications (such as ability to speak a foreign language) are recorded. The registrant also notes the days and times when he agrees to be on call (i. e., whether he will accept calls during week-ends or at night).

The registrant agrees that his registration may be cancelled for any reason deemed sufficient in the discretion of the Board of Trustees; likewise, he may withdraw his registration at any time upon five days' notice. A fee of $12.00 semi-annually is required to cover the expense of registration and maintaining the service.

A telephone exchange will keep an appropriate index of all the registrants. The calls will be impartially rotated among the persons on this index. If a registrant cannot be reached by telephone, the next name on the list will be called. When a prisoner wishes to avail himself of this service, the jailer will call the telephone exchange. The exchange will, in turn, communicate with the registrant whose card is next to be called in rotation and make appropriate arrangements for a prompt meeting between the registrant and the defendant.

Up to the time this is being written, about eighty attorneys have enrolled in the service. A meeting of registrants has been held for the purpose of formulating rules as to maximum fees, and other details. When these rules have been approved by your Board of Trustees (which will probably be the case by the time this appears in print), the plan will be put into operation. We hope to have it functioning by August 15th.

The regular Lawyer Reference Service does not meet the need being dealt with here, because the regular service contemplates an initial conference at the attorney's office, which does not take care of the man who is held in jail, and must be seen there, perhaps on a Saturday or Sunday or at night.

Despite the rather lofty attitude of some practitioners, there is no reason whatever why the practice of criminal law should not

(Continued on page 347)

A Guide to Collective Bargaining for the General Practitioner

By Robert Feinerman*

Robert Feinerman

A seven year study of the keys to industrial peace released this year by the National Planning Association advised employers who desired to avoid strike situations *to keep lawyers away from the bargaining table.* The study, begun in 1947 and financed by John Hay Whitney, New York financier, examined labor relations in thirty firms in various industries.

The "advice" may seem rather startling to members of the bar, but unfortunately it reflects the thinking of large segments of industry and labor. This situation has developed primarily because of the failure of many attorneys to realize that they cannot apply the tactics and attitudes of the law office to the labor relations arena. There are many intangible factors, economic, political, sociological, and psychological, that can affect the eventual outcome of a labor negotiation. The pathways in this field cannot be charted like the issues in a lawsuit.

There are many attorneys who are excellent labor negotiators. There is no reason why any attorney could not competently represent a business client in a collective bargaining situation after some careful planning. This article is intended as a general guide to the subject. The scope of the article will be limited to the problems of practical negotiation. There is no intention to cover the technical legal problems that can arise in this area.

For purposes of discussion, we are assuming the following hypothetical set of facts: Your client operates the Ajax Potato Chip Company in Los Angeles (hereinafter referred to as the "employer"). He has a one year contract with the Potato Peelers' Union Local 100 (hereinafter referred to as the "union.") Sixty days prior to the termination of the existing contract, the employer

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has received a registered letter from the union opening up the contract and demanding the following additional benefits as a condition of renewal:

1. A 25¢ an hour increase in wages across the board;
2. A health and welfare plan which will cost the employer $10.40 per month per employee;
3. Six days a year cumulative sick leave for every employee;
4. A guaranteed work year of 48 weeks and a guaranteed work week of 40 hours;
5. A change in the severance pay clause to include employees who voluntarily leave their positions.

Your client, the employer, calls you on the phone and asks you to handle the problem for him. This is the first time you have been called upon to represent this employer in negotiations with this union. What do you do?

The discussion below will be divided by the following headings: (1) Gathering the facts; (2) Setting the stage; (3) Making a noise; (4) Cutting out the fat; (5) Breaking the deadlock.

I

GATHERING THE FACTS

Prior to the first meeting with the union, it is essential that certain basic information be acquired regarding current wage patterns and economic trends. It is also important to gain a general understanding of the business operations of your client and the tactics and attitudes of the union. The following check list can be used for almost every type of business:

Comparison of wage rates

Compare your client's present contract rates with the rates being paid by other Los Angeles potato chip companies. How many of these companies have contracts with the same union? Are the wage rates and fringe benefits the same in all of the contracts? Do any of the local companies have contracts with other unions? If so, what are the wage rates and benefits in these contracts? Are there any potato chip companies that are unorganized? If so, what are the wage rates being paid in those firms and what effect do these unorganized shops have upon the competitive picture?

Compare your client's present contract rates with the potato chip industry nationally. What percentage of the industry is higher or

lower? What is the national average rate? What is the national mean rate? Do eastern or midwestern firms ship their products into this market area? Would they do so if the labor costs in this area rose substantially? How do the local wage rates compare with the rates being paid in San Francisco, Seattle, and Portland? Do manufacturers in these areas ship into Los Angeles? Would they do so if labor costs rose here?

The factual material required to answer these questions can be obtained from trade associations, from Chambers of Commerce, from the National Association of Manufacturers, and by writing directly to business firms in other areas and requesting copies of their existing union contracts.

Current patterns for wage renegotiations

What has been the prevailing pattern for wage increases and the related fringe issues in the potato chip industry: (1) locally, (2) regionally, (3) nationally?

What has been the prevailing pattern currently in the food industry as a whole: (1) locally, (2) regionally, (3) nationally?

What has been the prevailing pattern currently for labor unions as a whole throughout the country? What has been the general range of settlements? Is it 5¢-8¢ an hour, or is it 10¢-14¢ an hour? What did the major industries (steel, coal, auto, etc.) do this year?

Current economic status of employer and industry

What is the general economic condition of your client? Is he earning money? Are his sales increasing or decreasing? Has the productivity of his employees increased, decreased, or remained the same? Have time and motion studies recently been conducted in the plant? Can your client afford to take a strike? What effect will a strike have on his current business operations? Does your client have sufficient working capital to survive an extended walkout?

What is the general economic condition of the industry (1) locally, (2) regionally, (3) nationally? Have sales been increasing or decreasing? Is the industry facing growing competition from allied products?

What is the status of the national economy? Are we in a period of inflation or deflation? Has the cost of living increased or de-

creased since the date of the last contract between your client and the union? This information is very important and should not be left to speculation. Check the Consumer Price Index put out by the United States Bureau of Labor Statistics for the exact national and local figures.

Economic strength of union; personality and motivations of its leaders

Is the union independent or is it affiliated with a national organization? What is the status of the group in Los Angeles? What kind of relationship has it had in the past with your client and with other employers? How are its relationships with other unions? Is it being challenged by other unions? Is this local challenging other unions? How many members are in the local? Are they a militant group? What is the status of the union treasury? Do they pay strike benefits to the members?

What is the background of the union officers and business agents? How long have they been in control? Is their position with the local a firm one? Is their leadership being challenged? Do they have a good relationship with the International? What kind of personality do the agents you will deal with have? Are they old-timers or are they new in this business? Are they attempting to build a reputation for themselves?

II

SETTING THE STAGE

Shall you negotiate individually or together with other firms?

The answer to this question depends upon the position of your client in the industry and the ability of the various firms to work together in the common interest. If your client is one of the larger and stronger firms, it might be more advantageous for him to negotiate individually. This would be true if some of the other firms were very weak and the union could use them as a lever to effect a better group settlement. On the other hand, if your client was one of the weaker firms and could never afford to take a strike, he would benefit from a tie-in with stronger firms.

Who should attend?

Will you need technical information regarding your client's business? If so, it may be desirable to have the production superintendent or shop foreman present.

Should the principals or owners attend? As a general rule their attendance is not necessary and sometimes can be harmful to the course of the negotiations. What kind of temperament do they have? Can they present facts objectively and keep their feelings under control, or would they be irritated and flare up as a result of remarks that might be made by the union representatives at the bargaining table?

Where shall you meet?

The meetings with the union can be held in three possible locales, your office, the union headquarters, or your client's place of business. Psychologically, it would not be too desirable to meet at the union headquarters. On the other hand, some union representatives would feel a bit awkward or somewhat restricted in your law office. It is suggested that the meetings be held at the employer's place of business if adequate facilities are available. There should be a conference room or office affording privacy with good lighting and seating.

The place of meeting generally changes if there is a strike. Both parties will want a neutral meeting place such as the offices of the Federal or State Conciliation Service, a hotel room, or a public meeting hall.

Making the arrangements

Call the union office and introduce yourself to the business agent in charge of this negotiation. Suggest a possible date and place for a meeting. After agreement has been reached on these matters, confirm the arrangements by sending a letter to the union.

III

MAKING A NOISE

Each party is wary during the preliminary negotiations. Experience has taught the employer representative that the union proposal is generally well-padded. Similarly, the union representatives know that the employer's counter-proposal, if any, sometimes does not reflect his real thinking on the fundamental issues. Nevertheless, these sparring sessions must take place. This is the period of time when each side feels out the other side and attempts to forecast their true goals. It is vital to the successful outcome of the negotiations.

An attorney has a tendency to be impatient at the bargaining table and desires to reach the basic issues in a hurry. If he is to do

a good job for his client, the attorney must forego this normal proclivity and patiently pick the bones of many subjects.

What do you talk about? Since the union has made the proposal, they should be asked to explain their proposal and justify their demands. At the conclusion of the union's remarks, the employer should make a general statement of policy and should attempt to rebut the union arguments with the factual material he has gathered prior to the meeting. This will entail a comparison of wage rates with other firms in the industry, a discussion of the employer's ability to pay, alleged inequities in the contract, the effect of any wage increase on the price structure of the employer and his ability to compete with other firms, the rise or decline in the cost of living, and the sundry economic problems that can and do arise between employer and employee.

It should also be kept in mind by the employer representative that the union spokesmen often have objectives at the bargaining table that are not apparent but nevertheless are very important to them. There is a great deal of competition between unions for power and prestige. Only large unions can acquire these attributes. As a result, there is intense rivalry between unions for new members, both from the ranks of the unorganized and from the rosters of other unions. At the same time, there is keen competition within a single local for the leadership positions.

The bargaining table is the proving ground for all claims. If the union can "produce" in this area, they will be able to preserve the loyalty of their present members and will be able to attract new members. Concomitantly, the union officers and business agents will be protecting their jobs.

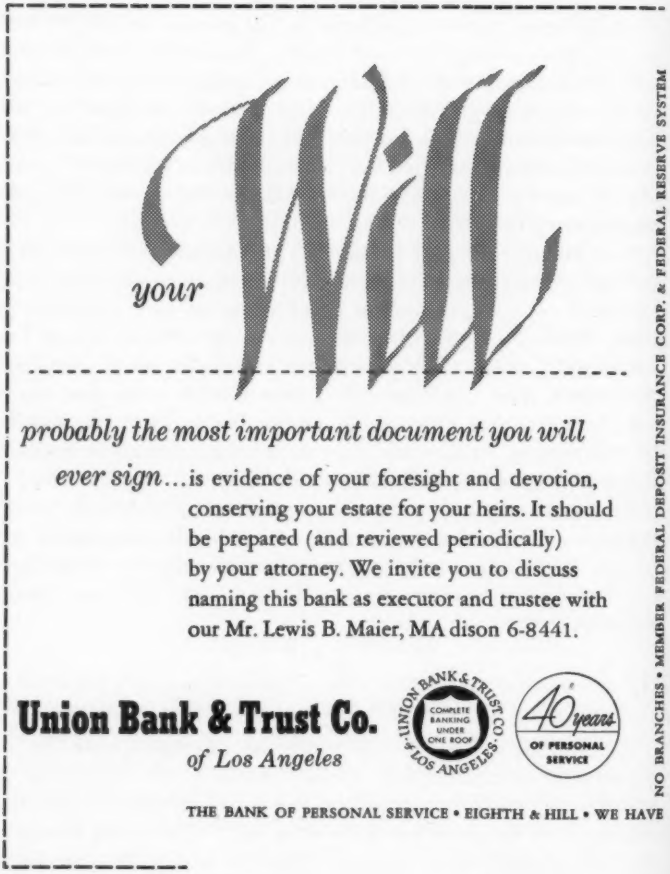
IV

CUTTING OUT THE FAT

After all the parties participating in the negotiation have had an opportunity to express their views thoroughly and completely, it becomes important to narrow the issues and attempt to elicit the real goals of the employer and the union. There are no formulas that will enable a party to know when to modify or abandon a position or when to concede a point or hold firm. Nevertheless, a knowledge of the personalities involved, the motivation behind positions taken, the prevailing pattern for wage increases nationally and locally, and the range of settlements made by this local recently

THE ADVERTISEMENT

shown on this page is currently appearing in major Los Angeles newspapers and the Wall Street Journal.



As always, Union Bank reminds readers to consult with an attorney in the preparation and reviewing of wills.

with other comparable employers, will enable the employer representative to make a reasonably accurate appraisal of the situation.

To the hypothetical set of facts existing in the instant case, let us now add the following data:

1. The employer has made a flat offer of 5¢ an hour across the board;
2. The union has answered this with a counter-offer of 15¢ an hour, the health and welfare plan, and the sick leave clause;
3. The current national pattern for wage renegotiations is 6¢-15¢ an hour; the local pattern in the food industry has been 7¢-12½¢ an hour;
4. Other local potato chip companies pay the same wage rate as your client, but they also have a health and welfare plan in their contract. Your client does not have such a plan.
5. The Bureau of Labor Statistics Consumer Price Index for Los Angeles has risen 2% since the date of the last contract. This amounts to 5¢ an hour on your client's present contract rates, the same figure you have offered to the union.

Based on the above facts, the following would be a reasonable estimate of the ultimate goals of the parties:

THE UNION

The union is after a 12½¢ an hour wage increase, the health and welfare plan, and is hopeful of obtaining a sick leave clause in the contract.

THE EMPLOYER

The employer is after a 7¢ an hour wage increase and concedes that he will have to participate in the health and welfare plan. He believes he can avoid a sick leave provision in the contract.

V

BREAKING THE DEADLOCK

Time has passed and the parties are now deadlocked. Let us assume that we were correct and the union has dropped down to 12½¢ an hour, the health and welfare plan, and the sick leave provision. The employer has offered 7¢ an hour and the health and welfare plan. Many meetings have been held and no progress has

been made. The union has brought the employer's offer to the membership and the proposal was rejected. In addition, authorization to declare a strike was given to the union representatives by the membership. Everyone is getting restless and irritable. What happens now?

At this point it would be advisable to contact the Federal Mediation and Conciliation Service or the California State Conciliation Service and arrange for the services of one of their representatives and the use of their facilities. Both agencies have outstanding men on their staffs who are highly skilled in the art of bringing labor and management together. The conciliators act on a voluntary advisory basis and have no authority to make a mandatory decision. Nevertheless, the presence of an impartial third party is of great assistance in bringing the two sides together. The conciliator serves as a conduit for messages and his well-timed suggestions permit graceful withdrawals without loss of face.

The end result, however, will depend upon the dynamics of the relative power positions of the two parties. This is the moment

when the various economic, political, sociological, and psychological factors interact with each other to produce a result. The exact result cannot be predicted, but certain elements can be considered in determining the course of action to be followed by your client. There are three possible courses of action for the parties, and the third has various gradations.

The first alternative is for the employer to remain firm and refuse to change his position. This means he challenges the union to strike and indicates his willingness to match his economic strength with that of the union. Before an employer can follow this course of action, he must attempt to answer a series of questions: (1) Does he have the financial resources to take a strike of unlimited duration? (2) What effect will a strike have on his public relations? (3) What effect will a strike have on his competitive standing? Will a period of work stoppage mean that he will lose key accounts to competitors? (4) Is the cost of winning a strike more than the cost of granting the union's demands or some compromise amount? (5) At what point is it cheaper for the employer to compromise rather than to go through a strike and win? Is this point 8¢, 9¢, 10¢, or 11¢ an hour? What about the demand for sick leave?

The second alternative is for the union to remain firm, call the members out on strike, and refuse to change their position. Before the union can follow this course of action, they too must try to answer a series of questions: (1) How long can the people stay out on strike? In their economic bracket do they have savings? Can they get along on savings plus strike benefits? (2) How long can the employer hold out? What is his economic strength? (3) What effect will the strike have on the union's public relations? (4) Will the local have the complete cooperation of other unions? Will they obtain strike sanction from their international and from local labor councils? (5) At what point is it more desirable to compromise than to take a strike? Is this point 11¢, 10¢, 9¢, or 8¢?

The third alternative is a compromise settlement. This can come about either before or after a strike. The range of settlements can vary from an exact splitting of the difference to a compromise close to either side's goal. As a general rule, the nature of the compromise will also reflect each group's estimate of the relative power positions of the parties.

CONCLUSION

"No man is quite sane. Each has a vein of folly in his composition—a slight determination of blood to the head, to make sure of holding him hard to some one point which he has taken to heart."—*Ralph Waldo Emerson.*

In the realm of labor relations, it is dangerous to follow general rules, because we are dealing with people, and people are unpredictable. An inexperienced union official may call a strike in a situation where an older experienced union agent would never take a chance. Nevertheless, it is hoped that the material contained in this article will be of value to the attorney in the event he is called upon by a client to participate in a labor negotiation. If counsel can heed this oft-repeated admonition of Caleb C. Colton, a leading English clergyman of the early 19th century, he need not have any doubts of success:

"Deliberate with caution, but act with decision; and yield with graciousness, or oppose with firmness."

Issue Editor—Stanley C. Anderson

The Challenge of Arbitration to the Practicing Attorney

By Charles Jules Rose
of the District of Columbia Bar.

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Many lawyers wisely place in all contracts which they draft, a clause stating that in the event there is later disagreement between the parties to the instrument regarding its meaning, such differences are to be resolved by means of arbitration.

This simple mention of arbitration often affords a safety valve which frequently saves the parties to a contract from breaches which otherwise would occur to the mutual detriment of both contracting parties, and explains why the arbitration clause of a contract is aptly referred to by the Bar as the "saving clause."

Who will do the arbitrating?

There is room for reasonable men to differ as to the relative wisdom of (1) naming two or more persons familiar with the business, any of whom may serve as an arbitrator or (2) referring the matter to an arbitration board consisting of one representative appointed by each disputant who then, in turn, agree upon a third, or (3) by simply stating that arbitration will be done through the auspices of the American Arbitration Association.

Of these three methods the three man board is clearly the least desirable. The member named by each side is in effect, a party to the dispute and, as any other partisan, should appear at the counsel table as an advocate. For, in the final analysis, the deciding party on such a three man arbitration board, as usually constituted, is in the neutral one named by representatives of each side. The others are purely superfluous, contributing nothing to the solution of the dispute but only increasing to the difficulties of the member of the board who actually must make the decision.

Placing next in undesirability, is the plan whereby at the time of the execution of the contract, several persons with knowledge of the business and its personalities, are named as alternate arbitrators. At the time of the making of the contract these persons may appear to be and may be bi-partisan, nonpartisan or unpartisan, but in the lapse of time between the execution of the contract and the development of the dispute, the situation may greatly change and one or all

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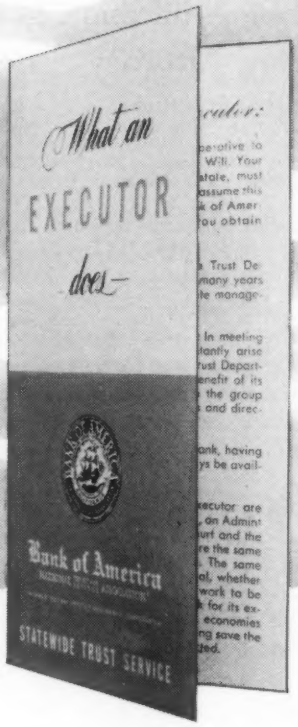

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of the parties named may be both highly biased and freely show their bias, thereby weakening the confidence of all concerned in the arbitration device as a dependable means of settling their dispute.

On the other hand, the American Arbitration Association maintains a panel of trained arbitrators, well qualified to step into any dispute and render a decision that will be respected, if not concurred in, by both of the conflicting parties.

Such an arbitration clause as: "Any dispute, claim or grievance arising out of or relating to this agreement or the breach thereof shall be submitted to arbitration and the parties agree to abide by the award of the arbitrator selected by the American Arbitration Association," will do the trick nicely.

Lawyers are particularly adept at serving in the role of arbitrators. They are fitted by training to be objective and by conviction to be judicious. As the dispute is based upon a contract, the subject matter to be arbitrated is distinctly in the field of legal interpretation and decision.

Arbitration has accomplished most in the areas of international law, commercial transactions and labor relations.

In all fields it is vital that the arbitrator at once realize that his decision is the decision that will prevail. Unlike in mediation or conciliation, there need be no effort to bring the personalities together and effect a compromise. The arbitrator is the umpire. He must call the plays as he sees them. As Secretary of Labor, James P. Mitchell, recently said in Los Angeles, "Awards that split the difference do not impress either side with the impartiality or the ability of the arbitrator."

The opinion of the arbitrator is as important as the decision accompanying it, for if the losing side can be convinced through the logic of the arbitrator's analysis of the fundamental weakness of their position, they will not mind too much having lost their point or at least not as much as they otherwise would, for there is a difference between settlement made by a good arbitrator and one made by being simply good and arbitrary.

When called upon to serve as an arbitrator in a dispute it is important that the attorney lay down then and there the terms under which he will undertake the trust imposed in him.

First, the arbitrator should state firmly and unequivocally that the enterprise involved, whether it be the conduct of a business or the work in a large factory, be continued while arbitration is in

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progress. If there has been a strike, he must insist that it be ended as of the time he begins arbitrating. (It being understood, of course, that any benefits later awarded would be retroactive to this date.) The arbitrator should further insist on his right to withdraw from the case at any time after the beginning of arbitration if the terms under which he undertakes his position are violated.

The arbitrator should furthermore state at the outset, that he will retain the privilege of withdrawing from the proceedings at any time he does not believe that either or both of the participants are acting in good faith. Unfortunately, many arbitrators dislike to withdraw once that they have undertaken the task of arbitrating a dispute. They believe that withdrawing is a reflection upon their abilities to cope with the realities of the situation and as a consequence frequently they will continue in their capacity as arbitrators even though the work started at the time that the arbitration began has stopped, or there is picketing though it was agreed by both parties that there would be none, or that one or both parties have made public statements contrary to their promises.

The good arbitrator insists that the proceedings be closed and that the smallest number of persons participate. For his own protection, however, the arbitrator should see that there is a stenographic record of the proceedings. However, he and he alone should have access to that record, and insist that it is to become public property only in the event that the arbitrator is forced to withdraw from the case and in issuing his statement explaining his withdrawal, may desire to advance quotations from the record to sustain his contention that one or both sides have acted in bad faith. Where proceedings are held publicly, much of the material inserted into the record is done so purely to pacify the desires of the clients of the contending parties regardless of whether the material is relevant or will actually contribute to the settlement of the dispute. Thus, the types of fuel which is supplied on such occasion furnishes heat for all but light for none.[1]

The arbitrator without delay should state the issue in the plainest and simplest terms. He should have the parties agree that the question he poses is the question to be answered. He should allot each side as much time as they reasonably desire to present their case. If one side requests five minutes and another side requests five

[1]Under the Taft Hartley Act decisions efforts of one party to frustrate the proceedings have proved to no avail, making the withdrawal of the arbitrator in labor matters unnecessary, to assure that justice is done.

days, such time should be accorded if the requirements of the case necessitate, so long as the material presented is not irrelevant or merely cumulative.

The arbitrator should give his decision promptly but not hastily. He should never inject into his decision preconceived notions of sociological right or wrong. He should not in any way give the impression that personalities have influenced his decision and he should strive to write a decision that is as clear and lucid as it is fair. If he does this he will be called upon again, if he does not he will also be called, but the nature of such calling will not be complimentary.

The field of arbitration is one pregnant with promise for all lawyers and particularly for the young lawyer, i. e., all those who are not old and all those who are interested in expanding their practice into what truly is one of the most challenging fields of jurisprudence.

Appreciation of the Los Angeles Bar Association is extended to the members of the Federal Courts Criminal Indigent Defense Committee who are contributing their services and time on behalf of the Association and the Bar in general. Those who volunteered to serve during the month of July, 1954, are as follows:

Donald K. Hall	James W. Warner
Roger Davis	Robert Hudson, Jr.
Alden Pearce	Arthur C. Baker
Frank A. Mouritsen	Kenneth Rhodes
Bruce McGregor	Lester E. Olson
Robert Clinnin, Jr.	George R. Pfeiffer

Hugh W. Darling, July Committee Chairman

On Protecting Clients From Their Attorneys

By Wm. R. Furlong, Jr.
of the District of Columbia Bar

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Some government agencies which exercise quasi-judicial powers affecting the rights of private persons to property or a pension have controlled the fees which may be charged by attorneys representing claimants or other persons before such agencies (Veterans Administration, Office of Alien Property, Workmen's Compensation agencies). This is usually explained as designed to protect the claimants, by ensuring that the benefits given to the claimant are not diverted in large part to the pockets of counsel. The additional statement is often informally made that counsel are not needed, as the agency will do the proper thing anyway.

In the middle ages, in England, the king's courts in dealing with criminal cases, did not permit the accused the benefit of counsel. One had no right to counsel against the king. The theory apparently was that it would be wrong for the subject to thus oppose his king, and that the king's representative would treat him fairly and see that justice was done. Later, of course, these ideas changed, and counsel were thought to be necessary not only to properly protect the accused but also to bring out the facts sufficiently to assist and enable the adjudicator to arrive at a proper and fair result.

Our administrative agencies have been shocked at some past cases of attorneys drawing a large income from representing claimants before such agencies. This has impelled them, and Congress where Congressional action was necessary, to restrict and control the fees charged by attorneys. This has taken place during a time when administrative salaries have generally been on the rise, in dollars if not in buying power.

What is the result of these trends? First, the strength of the champion of the private claimant has been bled away, for though many lawyers can and do take many charity cases, it cannot be done as a general rule, nor in many cases can adequate time be

spent in such cases, if the attorney is to stay in practice. Veterans Administration cases are often handled by veteran organizations who are not represented by attorneys. They however decline to handle what they call "contested cases." Thus these are left to the generosity of private counsel, who are not allowed by the rules of the Veterans Administration even to receive the necessary expenses for carrying on the case, until the conclusion of the matter, and such expenses are audited by the Veterans Administration, after which the attorney is permitted to attempt their collection from the client. Advancing expenses in this manner, and forfeiting them unless approved by the other side approaches rather close to champerty. Furthermore, only in the event of success, is a fee of $10 paid to the attorney. The Veterans Administration proceedings, with separate appeals to the Board of Veterans Appeals handling both insurance and pension matters, may take as long as two years, or longer. This may involve briefs, oral argument, medical testimony, doctors' fees, etc. If suit is brought in a Federal court on a Veterans Administration insurance matter, the attorney may receive his expenses (audited by the Veterans Administration), and if successful, he may receive up to 10% of the amount of the recovery.

All these restrictions have one result, they make it difficult or impossible for petitioners or claimants to obtain the assistance of an attorney when dealing with a government agency, many of whose personnel are attorneys, or if not attorneys, are so trained in the law as affecting their field of operation, as in effect to have the competence of attorneys for that purpose. Thus the claimant is very seriously handicapped in situations in which any question is to be determined before attorneys of the agency, who may be acting as adjudicators, with another group of attorneys employed by the agency acting as representatives of the government. On the other hand, we find the claimant often unexperienced in business matters, almost never represented by counsel in a contested case, sometimes assisted by a veterans organization representative who is usually not an attorney and is apt to be so overwhelmed with a very large case load as to prevent his giving individual attention to a case.

Confronted with this situation, what is a claimant to do? He is likely at this stage to think of an attorney, and if like most claimants he is poor, he will find it necessary to make a contingent fee

agreement with his attorney. At this point he is blocked by a rule which is represented as protecting him. A lawyer cannot charge a retainer, he cannot take a deposit to cover expenses, he cannot make a contingent fee agreement with his client. Any fee he receives he must receive from the Veterans Administration, any expenses he incurs are subject to the audit of the Veterans Administration before he can receive reimbursement for them.

The fee uniformly fixed by the Veterans Administration for all cases except suits in court on insurance matters, is $10. This is the same whether the attorney merely helps the claimant fill out a form or presses a complicated case through the Board of Veterans Appeals, with briefs, oral argument, etc., which may take one to two years.

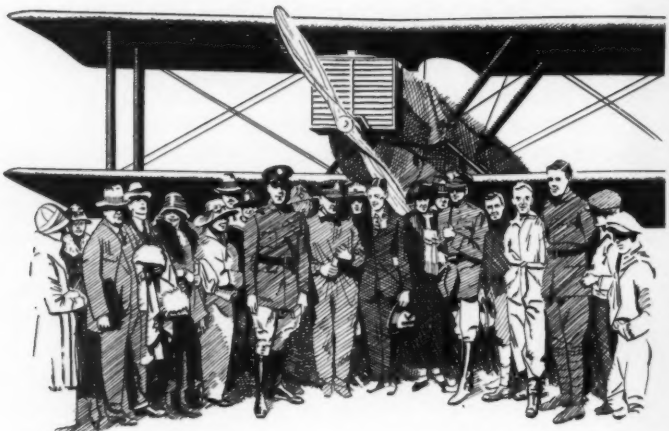
As if to add insult to injury in this matter, after requiring an attorney to be specially admitted to the Veterans Administration, and to file a power of attorney according to a form specially prescribed by the Veterans Administration, the attorney is furnished only with carbon copies of letters addressed not to him, but directly to his client, and he is written to as someone who has "expressed an interest" in the claimant. For the other party to a controversy to contact a client behind a lawyer's back would normally be regarded as improper. But the Veterans Administration appears to consider itself as not bound by such rules. This again is apparently to "protect" the claimant.

As a result of claimants being substantially disarmed, figuratively speaking, in these contests, allegedly out of a tender regard for their rights as against their own selected counsel, the Veterans Administration is able to handle cases without the troublesome interference of some one better able to conduct the matter on relatively equal terms with the Veterans Administration.

Probably the Veterans Administration is sincere in doing this, but it would seem that a little reflection would show them that the more efficiently both sides are represented, the more likely and the more easily a just decision is arrived at by an adjudicating official.

It is especially apt to upset a fair balance of strength between contending sides, if the representative of one side is receiving a salary, and is a full time expert in these matters, while on the other side, the representative is restricted to a nominal fee and even that is contingent.

Money is the sinews of litigation no less than those of war.



WHEN THE ARMY FIRST FLEW 'ROUND-THE-WORLD...

On March 17, 1924, when four Army planes took off from Los Angeles' Clover Field to circle the globe—this Bank had been conducting a Trust Service for Southern Californians for more than two decades.

TRUST DEPARTMENT

SECURITY-FIRST NATIONAL BANK
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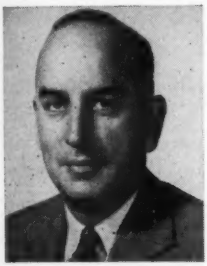
Silver Memories

Compiled from the World Almanac and the L. A. Daily Journal of August, 1929, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

Six new Court Commissioners, authorized by the last Legislature, are being appointed: **M. L. Cruse,** to the Presiding Judge's Department, **Florence M. Bischoff** and **Clemmence Bettys** to the Probate Department, **Arthur P. Will** and **Kurtz Kauffman** to the Order to Show Cause Department, and **Elmer D. Doyle** to the Domestic Relations Court.

* * *

Following a break in Wall Street stocks which cost speculators $6,000,000,000, the Federal Reserve Bank of New York has advanced the rediscount rate from 5% to 6%.

* * *

Thurmond Clarke, son of former Superior Court Judge **Robert M. Clarke,** who has served as a deputy in District Attorney **Buron Fitts'** office for the past three years, has resigned to enter City Attorney **Werner's** office where he will handle public utility matters.

* * *

A new 46 hour air-rail hook up between Los Angeles and Washington, D.C., is announced by Western Air Express.

* * *

George E. Farrand of the firm **Farrand & Slosson** has been appointed by President Hoover as general counsel for the Federal Farm Board.

* * *

The German dirigible balloon **Graf Zeppelin** under Commander **Hugo Eckener** completed its second trip to Lakehurst

from Fredrichshafen. Maintaining a speed of 55 nautical miles an hour, she carried 20 passengers, a crew of 41 and a stowaway. The cargo included a gorilla, a chimpanzee, 593 canaries, 62,000 letters and postcards, a piano and dolls. Later in August the dirigible made a trip around the world, visiting Los Angeles, and covering 19,000 miles in 21½ days. While in flight the Graf conversed with the Byrd Radio station at Little America, Antarctica.

* * *

Jess E. Stephens, City Attorney of Los Angeles for the past eight years, has resigned to return to private law practice. **Erwin P. Werner** will succeed him.

* * *

The personnel of the new Appellate Division of the Superior Court of Los Angeles County announced by Chief Justice **William H. Waste,** Chairman of the Judicial Council, will consist of **Victor R. McLucas,** presiding Judge, and **Hartley Shaw** and **Edward T. Bishop** as associate Judges.

* * *

Edward Everett Bennett has been appointed general attorney in California for the Union Pacific Railroad. Bennett succeeds **Fred E. Pettit, Jr.,** who resigned recently to enter private practice with the firm of **Bauer, Wright & Macdonald.**

* * *

After circling St. Louis for more than 17½ days in the monoplane "St. Louis Robin" for a total of 25,000 miles, pilots Dale ("Red") Jackson and Forrest O'Brine broke the record by 173 hours recently set by Roland Reinhart and Loren Mendell at Culver City, California.

* * *

R. H. (Harry) Wright, former chief of the Sheriff's criminal department, has been appointed by Sheriff **William Traeger** to fill the vacancy caused by the resignation of Undersheriff **Eugene W. Biscailuz** to become chief of the California State Highway Patrol by appointment of Governor **Young.**

* * *

Paul E. Schwab, a member of the law firm of **O'Melveny, Tuller & Myers,** has been appointed Mayor of Beverly Hills, after serving three years on the City Council and earlier in the position of City Attorney.

Donald M. Keith, for many years a deputy in the City Attorney's office, is resigning to enter private practice.

Speaking to welcoming throngs at Madison, Virginia, near his fishing camp, President **Herbert Hoover** said: "It is generally realized and accepted that prayer is the most personal of all human relationship. On such occasions as that, men and women are entitled to be alone and undisturbed. Next to prayer, fishing is the most personal relationship of man, and, of more importance than the fact itself, everybody concedes that the fish will not bite in the presence of the public and the press."

THE PRESIDENT'S PAGE

(Continued from page 322)

attract just as honorable and as able men as those who practice in any other specialty. You may be interested in becoming a member of this panel. The Association office will be glad to give you any information not covered in this summary.

* * *

Our membership drive has been producing good results. When we started on it we had 2,961 members on our roll. Up to the time this is being written, we have received 315 applications for membership, or reinstatement, as a result of the drive. Assuming all these applications are approved (and nearly all of them will be), and assuming that only a fair response is secured from "prospects" who have not yet been interviewed, we should have over 3,300 members as a result of our efforts. This figure will be an all time high point in our membership. The unselfish and effective work of those who did the solicitation is much appreciated. Chief credit for the success of the effort goes to Lou Elkins, who worked out the plan.

To complete the job two things are needed: *first,* volunteers who have undertaken to interview prospective members but have not yet reported, should complete their work at an early date and notify the office; and *second,* members who have not paid their 1954 dues, please attend to this detail immediately. We do not want to lose part of the benefit of our membership drive by having to suspend people for nonpayment of dues.

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

The **Detroit** Bar Association recently brought contempt proceedings against a disbarred attorney who undertook to represent a corporation in court. He claimed the right to do so because he had "a substantial, if not total" interest in the corporation. The court disagreed, fined him $250.00 and committed him to jail for 15 days.

* * *

The Eighth Annual Convention of the National Association of Claimants' Compensation Attorneys will be held in Boston August 28 through September 2, 1954, with headquarters at the Hotel Statler.

* * *

The **Riverside County** Bar Association recently held what was prophetically called its "first annual" picnic. In addition to assorted liquids the menu included "barbecued steaks, corn, salad and fresh clams and oysters air-expressed from the rocky shores of New England."

* * *

ADVICE TO YOUNG LAWYERS

Whene'er you speak, remember every cause
Stands not on eloquence, but stands on laws;
Pregnant in matter, in expression brief,
Let every sentence stand with bold relief;
On trifling points not time nor talents waste,
A sad offense to learning and to taste;
Nor deal with pompous phrase, nor e'er suppose
Poetic flights belong to reasoning prose.

Joseph Story, 1779-1845

The State Bar of **Michigan** has sponsored and succeeded in having enacted a bill which amends the administrative procedure act of that state to permit parties to cross-examine the author of any document prepared by or on behalf of a state agency and offered in evidence.

* * *

The Council of the **Boston** Bar Association has adopted the following resolutions:

RESOLVED: No principle in our jurisprudence is more basic than that every person is entitled to the services of a lawyer no matter how heinous the charge against him nor how probable his culpability. To this there can be no shadow of qualification — for to admit a qualification is to destroy the principle. In times of public clamor, and especially political clamor as in the present anti-Communist furor, the application of this principle becomes urgent. Then fearless, competent counsel are indispensable. No lawyer should lightly decline to serve in such cases nor should he be criticized for serving. Any attempt, therefore, to foster the impression that the unpopularity of a client extends to his lawyer is something that the bar should not tolerate and should combat in every way, provided only that a lawyer representing such clients conducts his case and himself as a lawyer should.

The Boston Bar Association, unalterably opposed to Communism in all its forms, reaffirms its adherence to the principle stated above, emphasizes the fact that a lawyer so acting meets the highest ethical standards of his profession and assures him of its unqualified commendation.

RESOLVED: That the foregoing Resolution be published in the next issue of the *Bar Bulletin* and that the Secretary of the Association be instructed to send copies of it to every Bar Association in the Commonwealth of Massachusetts with the suggestion that comparable action by them would strengthen the defense of the principle involved.

Last month we noted in this department that the otherwise unconventional letterhead of Patterson & Patterson, attorneys of **Phenix City, Alabama,** carried the legend: "We sell our services, not our souls."

After this item went to our printers, but before it appeared in print, it was dramatically demonstrated that the Pattersons' letterhead was not an idle gesture. Albert L. Patterson, senior partner of this father and son law firm, was assassinated by gangsters.

He had won the Democratic nomination for attorney general of Alabama and had publicly dedicated himself to the task of ridding his home town of the vice, gambling and corruption for which it had long been notorious. Although the nomination was tantamount to election, Mr. Patterson said he thought he had about one chance out of 100 of being sworn in; and, as the story in *Time* (June 28, 1954) observed, the odds were right.

Several alert readers called our attention to the tie-in between our fortuitous little squib about the Pattersons' letterhead and the press stories regarding the elder Patterson's tragic death.

Opinions of Committee on Legal Ethics Los Angeles Bar Association

OPINION No. 216
(December 1, 1953)

CONFLICTING EMPLOYMENT—CONFIDENCES OF CLIENT. AN ATTORNEY SHOULD NOT ACCEPT EMPLOYMENT FOR PLAINTIFF IN A CASE WHICH HE INVESTIGATED WHILE EMPLOYED AS ADJUSTER FOR THE INSURANCE CARRIER. ONE WHO OCCUPIES THE SAME SUITE IS SUBJECT TO THE SAME RESTRICTIONS, BUT THE ATTORNEY MAY RECOMMEND AN ACQUAINTANCE TO PLAINTIFF.

Three queries based upon the following statement of facts have been submitted to the Committee:

> *Attorney X* was formerly employed as an adjuster on a salary basis for Acme Insurance Company. He quit the insurance job and went into private practice. In the course of his employ at Acme Insurance he investigated a claim made by *Claimant C* against Acme Insurance.
>
> After entering private practice, *Attorney X* was contacted by *Claimant C* who advised she was disappointed with the work of her own counsel on the case, and would like *Attorney X* to represent her against Acme Insurance.
>
> Query 1. Would it be improper for *Attorney X* to take this case and represent *Claimant C* in her claim against Acme Insurance.

The Committee is of the opinion that it would be unethical for Attorney X to accept the case. The fact that X was an attorney at the time of his employment by Acme and because the activities of X as an adjuster cannot clearly be divorced from his capacity as an attorney, it seems necessary to assume that the relationship of attorney and client existed between X and Acme. American Bar Association Canons 6 and 37, therefore, apply. Canon 6 forbids subsequent acceptance of employment in matters adversely affecting a client with respect to which confidence has been reposed. Canon 37 provides that the duty to preserve a client's confidences outlasts a lawyer's employment.

> Query 2. Assuming the answer to (1) is *YES:* Query: Would it be improper for *Attorney X* to refer *Claimant C* to an attorney occupying the same suite with *Attorney X*, with the express understanding that *Attorney X* will have nothing whatsoever to do with the case, nor benefit from it in any manner.

Since it is considered improper for Attorney X to take the case, it is believed likewise improper for X to refer the case to an attorney occupying the same suite. Joint occupancy of a suite gives rise to an assumption by the public that the two lawyers are related professionally, even though no partnership exists, and permits an inference of collaboration. Because a lawyer is required to "strive at all times to uphold the honor and to maintain the dignity of the profession" (A.B.A. Canon 29), restrictions similar to those imposed upon partners have been imposed upon lawyers occupying the same offices (A.B.A. Op. 104; *Drinker,* Legal Ethics, p. 106). To avoid the appearance of impropriety exceptional circumstances, not apparent here, would have to exist.

> Query 3. Assuming the answer to (2) is *YES:* Query: If *Claimant C* requested the name of an attorney who would handle her case properly, would it be improper for *Attorney X* to recommend such an attorney, even though such attorney is a personal acquaintance of *Attorney X*.

If Attorney X avoids any collaboration in or benefit from the handling of the case, the Committee sees no impropriety in Attorney X recommending an attorney who is an acquaintance of Attorney X if he genuinely feels that the attorney recommended can properly and adequately handle the case.

This opinion, like all opinions of the Committee, is advisory only. (By-Laws, Article X, Section 3.)